

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Orlando Garcia,**

Plaintiff,

v.

**Myles M. LLC**, a California Limited  
Liability Company

Defendant.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: Americans With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Orlando Garcia complains of Myles M. LLC, a California Limited Liability Company; and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff suffers from Cerebral Palsy. He has manual dexterity issues. He cannot walk. He uses a wheelchair for mobility.

2. Defendant Myles M. LLC owned Rita's Italian Ice & Frozen Custard located at or about 3200 Castro Valley Blvd, Castro Valley, California, in August 2021.

3. Defendant Myles M. LLC owns Rita's Italian Ice & Frozen Custard

1 located at or about 3200 Castro Valley Blvd, Castro Valley, California,  
2 currently.

3 4. Plaintiff does not know the true names of Defendants, their business  
4 capacities, their ownership connection to the property and business, or their  
5 relative responsibilities in causing the access violations herein complained of,  
6 and alleges a joint venture and common enterprise by all such Defendants.  
7 Plaintiff is informed and believes that each of the Defendants herein is  
8 responsible in some capacity for the events herein alleged, or is a necessary  
9 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
10 the true names, capacities, connections, and responsibilities of the Defendants  
11 are ascertained.

12  
13 **JURISDICTION & VENUE:**

14 5. The Court has subject matter jurisdiction over the action pursuant to 28  
15 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
16 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

17 6. Pursuant to supplemental jurisdiction, an attendant and related cause  
18 of action, arising from the same nucleus of operative facts and arising out of  
19 the same transactions, is also brought under California's Unruh Civil Rights  
20 Act, which act expressly incorporates the Americans with Disabilities Act.

21 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
22 founded on the fact that the real property which is the subject of this action is  
23 located in this district and that Plaintiff's cause of action arose in this district.

24  
25 **FACTUAL ALLEGATIONS:**

26 8. Plaintiff went to Rita's Italian Ice & Frozen Custard in August 2021 with  
27 the intention to avail himself of its goods or services motivated in part to  
28 determine if the defendants comply with the disability access laws. Not only

1 did Plaintiff personally encounter the unlawful barriers in August 2021, but he  
2 wanted to return and patronize the business again but was specifically  
3 deterred due to his actual personal knowledge of the barriers gleaned from his  
4 encounter with them.

5 9. Rita's Italian Ice & Frozen Custard is a facility open to the public, a place  
6 of public accommodation, and a business establishment.

7 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
8 to provide wheelchair accessible dining surfaces in conformance with the ADA  
9 Standards as it relates to wheelchair users like the plaintiff.

10 11. Rita's Italian Ice & Frozen Custard provides dining surfaces to its  
11 customers but fails to provide wheelchair accessible outside dining surfaces.

12 12. One problem that plaintiff encountered was the lack of sufficient knee  
13 or toe clearance under the table for wheelchair users.

14 13. Plaintiff believes that there are other features of the dining surfaces that  
15 likely fail to comply with the ADA Standards and seeks to have fully compliant  
16 dining surfaces available for wheelchair users.

17 14. On information and belief, the defendants currently fail to provide  
18 wheelchair accessible dining surfaces.

19 15. As a wheelchair user, the plaintiff benefits from and is entitled to use  
20 wheelchair accessible facilities. By failing to provide accessible facilities, the  
21 defendants denied the plaintiff full and equal access.

22 16. The failure to provide accessible facilities created difficulty and  
23 discomfort for the Plaintiff.

24 17. The defendants have failed to maintain in working and useable  
25 conditions those features required to provide ready access to persons with  
26 disabilities.

27 18. The barriers identified above are easily removed without much  
28 difficulty or expense. They are the types of barriers identified by the

Department of Justice as presumably readily achievable to remove and, in fact, these barriers are readily achievable to remove. Moreover, there are numerous alternative accommodations that could be made to provide a greater level of access if complete removal were not achievable.

19. Plaintiff will return to Rita's Italian Ice & Frozen Custard to avail himself of its goods or services and to determine compliance with the disability access laws once it is represented to him that Rita's Italian Ice & Frozen Custard and its facilities are accessible. Plaintiff is currently deterred from doing so because of his knowledge of the existing barriers and his uncertainty about the existence of yet other barriers on the site. If the barriers are not removed, the plaintiff will face unlawful and discriminatory barriers again.

20. Given the obvious and blatant nature of the barriers and violations alleged herein, the plaintiff alleges, on information and belief, that there are other violations and barriers on the site that relate to his disability. Plaintiff will amend the complaint, to provide proper notice regarding the scope of this lawsuit, once he conducts a site inspection. However, please be on notice that the plaintiff seeks to have all barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

**I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

21. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

22. Under the ADA, it is an act of discrimination to fail to ensure that the

1 privileges, advantages, accommodations, facilities, goods and services of any  
 2 place of public accommodation is offered on a full and equal basis by anyone  
 3 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 4 § 12182(a). Discrimination is defined, inter alia, as follows:

- 5 a. A failure to make reasonable modifications in policies, practices,  
 6 or procedures, when such modifications are necessary to afford  
 7 goods, services, facilities, privileges, advantages, or  
 8 accommodations to individuals with disabilities, unless the  
 9 accommodation would work a fundamental alteration of those  
 10 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 11 b. A failure to remove architectural barriers where such removal is  
 12 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
 13 defined by reference to the ADA Standards.
- 14 c. A failure to make alterations in such a manner that, to the  
 15 maximum extent feasible, the altered portions of the facility are  
 16 readily accessible to and usable by individuals with disabilities,  
 17 including individuals who use wheelchairs or to ensure that, to the  
 18 maximum extent feasible, the path of travel to the altered area and  
 19 the bathrooms, telephones, and drinking fountains serving the  
 20 altered area, are readily accessible to and usable by individuals  
 21 with disabilities. 42 U.S.C. § 12183(a)(2).

22 23. When a business provides dining surfaces, it must provide accessible  
 23 dining surfaces.

24 24. Here, accessible dining surfaces have not been provided in  
 25 conformance with the ADA Standards.

26 25. The Safe Harbor provisions of the 2010 Standards are not applicable  
 27 here because the conditions challenged in this lawsuit do not comply with the  
 28 1991 Standards.

1       26. A public accommodation must maintain in operable working condition  
2 those features of its facilities and equipment that are required to be readily  
3 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

4       27. Here, the failure to ensure that the accessible facilities were available  
5 and ready to be used by the plaintiff is a violation of the law.

6  
7       **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
8 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
9 Code § 51-53.)

10       28. Plaintiff repleads and incorporates by reference, as if fully set forth  
11 again herein, the allegations contained in all prior paragraphs of this  
12 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
13 that persons with disabilities are entitled to full and equal accommodations,  
14 advantages, facilities, privileges, or services in all business establishment of  
15 every kind whatsoever within the jurisdiction of the State of California. Cal.  
16 Civ. Code § 51(b).

17       29. The Unruh Act provides that a violation of the ADA is a violation of the  
18 Unruh Act. Cal. Civ. Code, § 51(f).

19       30. Defendants’ acts and omissions, as herein alleged, have violated the  
20 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
21 rights to full and equal use of the accommodations, advantages, facilities,  
22 privileges, or services offered.

23       31. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
24 discomfort or embarrassment for the plaintiff, the defendants are also each  
25 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
26 (c).)

**PRAYER:**

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. For equitable nominal damages for violation of the ADA. See *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021) and any other equitable relief the Court sees fit to grant.

3. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: September 16, 2021      CENTER FOR DISABILITY ACCESS

By: \_\_\_\_\_



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Attorney for plaintiff